

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2329 of 2000

to

FIRST APPEAL No 2338 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

AJITKUMAR LAXMANBHAI

Appearance:

MS NANDINI JOSHI, AGP for Petitioners

MR GM AMIN for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.C.PATEL

Date of decision: 05/10/2000

ORAL (COMMON) JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Admitted. Mr. G.M. Amin. learned counsel waives service of notice on behalf of the claimants in each Appeal. Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, the appeals are taken up for hearing today.

2. These appeals which are filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908 are directed against common judgment and award dated December 9, 1999 rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural), Mirzapur in Land Acquisition Case Nos.406/95 to 415/95 by which the Reference Court has held that the claimants are entitled to get additional compensation at the rate of Rs.19/- per sq.mt. for their acquired lands over and above the compensation awarded by the Land Acquisition Officer.

3. The Executive Engineer, Narmada Project, Gandhinagar had proposed to the State Government to acquire agricultural lands of village Saroda, Taluka Dholka, District Ahmedabad for the public purpose of construction of Narmada Project Dholka Branch Canal. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of village Saroda were likely to be needed for the said purpose. Therefore, a Notification under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short) was issued which was published in the Government Gazette on September 19, 1991. Thereafter, those persons whose lands were sought to be acquired were served with notices and they had filed their objections against the proposed acquisition. After considering the objections submitted by the land owners, the Special Land Acquisition Officer, Narmada Project, Unit No.3, Ahmedabad had forwarded his report to the State Government, as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that agricultural lands of village Saroda which were specified in the Notification published under Section 4(1) of the Act were needed for the public purpose of construction of Narmada Project Dholka Branch Canal. Therefore, declaration under Section 6 of the Act was made which was published in the Government Gazette on April 30, 1992. Thereafter, interested persons were served with notices under Section 9 of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the

rate of Rs.50/- per sq.mt., but having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated April 22, 1994 offered compensation to the claimants at the rate of Rs.3/- per sq.mt. for irrigated lands and at the rate of Rs.2/- per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate and therefore, they accepted the amount of compensation under protest and required the Special Land Acquisition Officer to refer the matter to the court for determination of appropriate amount of compensation payable to them. Accordingly, references were made by the Special Land Acquisition Officer to District Court, Ahmedabad (Rural) at Mirzapur which were registered as Land Acquisition Case Nos.406/95 to 415/95.

4. In the Reference Applications, it was pleaded by the claimants that village Saroda had all the facilities such as light, water, telephone, road, school, primary school etc. and therefore, the claimants ought to have been awarded compensation at the rate of Rs.50/- per sq.mt. The appellant no.1 had contested reference applications by filing written statement at Exh.9 and claimed that as the award of the Land Acquisition Officer was just and adequate, the reference applications should be dismissed. The appellant no.2 had filed written statement at Exh.10 controverting the averments made in the reference applications and stated that after taking into consideration relevant factors such as prevailing market rates, type of the lands acquired etc. the Special Land Acquisition Officer had determined amount of compensation payable to the claimants and therefore, the reference applications should not be entertained. Upon rival assertions, the Reference Court had framed issues for determination at Exh.11. The learned advocate for the claimants had submitted a pursis at Exh.13 for consolidating Land Reference Case Nos.406/95 to 415/95 with Land Reference Case No.406/95 and as no objection was taken by the learned counsel for the appellants, the court had passed an order consolidating all the Land Reference Cases and treating Land Reference Case No.406/95 as the main case in which the parties had led common evidence. On behalf of the claimants, witness Sartanbhai Bhavanbhai Bharwad who was claimant in Land Acquisition Case No.411/95 was examined at Exh.85. He deposed before the court that the acquired lands were irrigated lands and as there were facilities such as water, light, school, telephone, cooperative societies etc. in the village, they should have been awarded more compensation. According to the witness, the acquired lands were level and because of irrigation facility, each claimant was earning substantial amount by way of sale of agricultural produces. The witness produced previous award of Reference Court at Exh.83 relating to agricultural lands of village Chandisar rendered in Land

Acquisition Case No.594/96 to 607/96 and claimed that as agricultural lands of village Chandisar were similar in fertility to the lands acquired in the instant case, the claimants should be awarded compensation on the basis of the said previous award. The witness also stated that agricultural lands of village Kaliyavasna were similar in fertility to the lands acquired in the present case and therefore, the claimants should also be paid compensation on the basis of previous award of the Reference Court rendered in Land Acquisition Case Nos.1187/96 to 1210/96 and 397/98 to 425/98. The previous award of the Reference Court in relation to agricultural lands of village Kaliyavasna was produced by the witness at Exh.84. The claimants had also produced previous award of Reference Court in Land Acquisition Case No.670 of 1996 to 684 of 1996 dated June 23, 1999 rendered by the learned 3rd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural) at Mirzapur relating to agricultural lands of village Badarkha at Exh.88 and claimed that as lands of village Badarkha were similar in all respects to the lands acquired in the instant case, the claimants were also entitled to compensation on the basis of the said previous award. In cross-examination, the witness denied that all the claimants were not cultivating the lands personally and that they were giving the lands for cultivation to others and getting Rs.1000/- per bigha by way of rent. The witness also admitted that he had no documentary evidence to show that the price of agricultural produces as stated by him in his examination-in-chief was in fact the price prevailing at the relevant date. In cross-examination by the appellant no.2, the witness denied the suggestion that as he had not produced any documentary evidence regarding fertility of the lands acquired, the claimants were not entitled to enhanced compensation, as claimed in the reference applications. On behalf of the present appellants, witness Bharatbhai Vithalbhai Shah who was discharging duties as Deputy Executive Engineer was examined at Exh.161. This witness deposed before the court that village Saroda was at a distance of 13 kms. from taluka place and 30 kms. from district place. According to this witness, though the claimants were raising crops such as paddy, millet, jowar etc. all relevant facts were taken into consideration by the Land Acquisition Officer and thereafter, the amount of compensation payable to the claimants was determined. The witness informed the court that in village Saroda, no industrial development had taken place and the claimants were not entitled to enhanced compensation. In cross-examination by the claimants, the witness admitted that he had not seen the lands acquired nor was he knowing as to which crops were being raised by the claimants on the acquired lands. Another witness i.e. Pallaviben Ghansyambhai who was discharging duties as Land Acquisition Officer, Unit No.3, Narmada Nigam was examined by the appellants at Exh.162. This witness deposed about the procedure which was undertaken before

acquiring the lands in question. The witness stated before the court that the claimants had not produced any documentary evidence before the Land Acquisition Officer for seeking enhanced compensation and therefore, the compensation determined by the Land Acquisition Officer should be upheld. In her cross-examination, the witness denied the suggestion made by the claimants that legal evidence adduced by the claimants was not taken into consideration by the Land Acquisition Officer before determining the compensation payable to them.

5. On appreciation of evidence led by the parties, the Reference Court deduced that previous award of Reference Court relating to agricultural lands of village Chandisar which was produced at Exh.83 as well as another previous award of Reference Court relating to agricultural lands of village Kaliyavasna produced at Exh.84 and award produced at Exh.88 with respect to agricultural lands of village Badarkha were relevant as well as comparable and can be made basis for determining amount of compensation payable to the claimants. In ultimate analysis, the Reference Court after placing reliance on previous awards has held, by the impugned common award, that the claimants are entitled to get additional compensation at the rate of Rs.19/per sq.mt. for their acquired lands over and above the compensation already determined by the Land Acquisition Officer giving rise to the present appeals.

6. Ms. Nandini Joshi, learned Assistant Government Pleader submitted that previous awards of the Reference Courts produced at Exhs.83, 84 and 88 were neither comparable nor relevant and therefore, should not have been made basis for awarding compensation to the claimants. The learned counsel for the appellants pleaded that no cogent and reliable evidence was produced by the claimants for claiming enhanced compensation and therefore, the appeals should be accepted.

7. Mr. G.M. Amin, learned counsel for the claimants submitted that the previous awards relied upon by the claimants are comparable as well as relevant and as they related to agricultural lands situated in the vicinity of the lands acquired in the present case, the appeals should be dismissed.

8. We have heard the learned counsel for the parties and taken into consideration the record of the case as well as paper book supplied by the learned counsel for the claimants which includes oral as well as documentary evidence produced by the parties. In this case, the claimants have not based their claim for enhanced compensation either on sale instances or on yield method and have relied upon previous awards of the

Reference Court. The record of the case makes it manifest that the lands acquired were irrigated lands and the claimants were raising different crops such as paddy, millet, jowar etc. It is also established by the claimants that the fertility of the lands acquired was good and the acquired lands were levelled. It is well-settled that the award rendered by the Reference Court in respect of similar lands and which has become final can be taken into consideration for the purpose of determining market value of the lands acquired subsequently from the same village or adjacent village. In the category of sales fall the awards by courts in previous cases of land acquisition. They are judgments in personam based on the balance of evidence in the case adduced by the parties. The price of land in vicinity in previous land acquisition proceedings can be treated as affording a good guide for determination of compensation to be awarded for lands acquired subsequently. In assessing the market value of a piece of land, the price paid in other transactions relating to land in the neighbourhood must be of some value. What its value should be has to be determined by the court after considering all the evidence on which the previous award is founded. The awards given by the Reference Court are at least relevant material and may be in the nature of admission with regard to the value of the lands on behalf of the State and if the lands involved in the awards are comparable lands and in reasonable proximity of the subsequently acquired lands, the rates found in the said previous awards can be treated as relevant material to afford a basis to work upon for determination of compensation on a later date. The award passed by the competent court, if comparable, would be relevant for fixing of the compensation and even if that land related to nearby area or village it may be considered comparable having regard to reasonable proximity. Having regard to these principles, we will now proceed to consider the question whether the previous awards relied upon by the claimants can be made basis for determining amount of compensation payable to them. Exh.83 indicates that agricultural lands of village Chandisar, Taluka Dholka, District Ahmedabad were acquired for the public purpose of construction of Narmada Project Dholka Branch Canal of Sardar Sarovar Narmada Corporation Ltd. pursuant to publication of Notification under Section 4(1) of the Act in the Official Gazette on September 19, 1991. Therein, the Special Land Acquisition Officer by his award dated May 30, 1994 had offered compensation to the claimants at the rate of Rs.1.20 per sq.mt for irrigated lands and Rs.0.80 per sq.mt. for non-irrigated lands. Thereupon, references were sought by the claimants and the Reference Court in Land Acquisition Case No.594/96 to 607/96 by judgment and award dated June 17, 1999 had held that the claimants were entitled to get additional compensation at the rate of Rs.22/- per sq.mt. The previous award produced at Exh.83 shows that the previous awards relating to agricultural

lands of same village were relied upon by the Reference Court while holding that the claimants were entitled to get additional compensation at the rate of Rs.22/- per sq.mt. Again Exh.84 which is previous award of the Reference Court indicates that agricultural lands of village Kaliyavasna, Taluka Dholka, District Ahmedabad were acquired for the public purpose of construction of Narmada Project Rajpur Branch Canal of Sardar Sarovar Narmada Corporation Ltd. pursuant to publication of Notification under Section 4(1) of the Act in the Official Gazette on June 6, 1992. Therein, the Land Acquisition Officer by his award dated March 20, 1995 had offered compensation to the claimants at the rate of Rs.3.90 per sq.mt for irrigated lands and Rs.2.60 per sq.mt for non-irrigated lands. Feeling aggrieved by the said offer, the claimants had sought references and the Reference Court in Land Acquisition Case No.1187/96 to 1210/96 and Land Acquisition Case No.397/98 to 426/98 by judgment and award dated June 15, 1999 had held that the claimants were entitled to additional compensation at the rate of Rs.21/- per sq.mt. This previous award makes it clear that the previous awards produced by the claimants relating to agricultural lands of village Ambaliyara as well as village Badarkha were taken into consideration before holding that the claimants were entitled to additional compensation at the rate of Rs.21/- per sq.mt. Exh.88 which is previous award of Reference Court relating to agricultural lands of village Badarkha indicates that agricultural lands from the said village were acquired pursuant to publication of Notification under Section 4(1) of the Act in the Official Gazette on August 28, 1991. Therein by award dated December 31, 1993 the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.3/- per sq.m. Feeling aggrieved by the said offer, references were sought and the Reference Court in Land Acquisition Case Nos.670/96 to 684/96 had offered additional compensation to the claimants at the rate of Rs.18.50 per sq.m. Witness Sartanbhai B. Bharwad who was examined by the claimants has categorically stated in his evidence that the fertility of agricultural lands of villages Chandisar and Kaliyavasna was similar to the lands acquired in the instant case. It was also claimed by this witness that the claimants were able to raise crops which were being raised on agricultural lands of village Chandisar and village Kaliyavasna. It was also stated by the witness that the claimants who were residing in village Saroda had agricultural lands at village Chandisar as well as Kaliyavasna and those who were residing at village Kaliyavasna had agricultural lands at village Saroda. According to this witness, the boundary of Kaliyavasna was touching village Saroda. These assertions made by the witness were never challenged by the appellants in cross-examination. The evidence on record indicates that agricultural lands of village Badarkha were similar in fertility to the lands acquired in the

present case and those lands were in the vicinity of the acquired lands. Though two witnesses were examined on behalf of the applicants, it could not be established that agricultural lands of village Chandisar or Kaliyavasna were better in fertility than the lands acquired in the present case. In view of the cogent and convincing evidence led by the claimants to establish that agricultural lands of village Chandisar and Kaliyavasna were similar to the lands acquired in the instant case, we are of the opinion that no error was committed by the Reference Court in placing reliance on those previous awards and determining amount of compensation payable to the claimantson the basis of these awards. It may be stated that though the Reference Court has held that agricultural lands of village Chandisar, village Kaliyavasna were similar and village Badarkha in all respects to the lands acquired in the present case, the Reference Court by the impugned award has held that the claimants in this case are entitled to additional compensation at the rate of Rs.19/- per sq.mt. and not at the rate indicated in those previous awards. On overall view of the matter, we are satisfied that the compensation determined by the Reference Court is not excessive and is just. Therefore, the appeals have no merits and deserve to be dismissed.

10. For the foregoing reasons, all the appeals fail and are dismissed with no orders as to cost.

(J.M. Panchal, J.)

(M.C. Patel, J.)

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